MAJOR ALLEN FARLEY
Assistant Sheriff

State of Alabama

MURRAY TANNER Executive Assistant

MIKE HALE

SHERIFF OF JEFFERSON COUNTY LAW ENFORCEMENT BUREAU • 2200 8th AVENUE, NORTH. • BIRMINGHAM, ALABAMA 35203

Consent to Search Premises

Jefferson County
I, Dorothy Bester, a resident of 1037 Apt. E
I, Dorothy Bester, a resident of 1037 Apt. E Birmingham, Defferson County, Alabama, do voluntarily consent and authorize the following Deputy Sheriff's Morris, Finley, Sgt. French
consent and authorize the following Deputy Sheriff's Morris, Finley, Sgt. French
Washington, to search my premises located at 1037 Agy.
E. Bhan, to determine whether or not there is any illlegal
narcotics or stolen property on my premises. I hereby certify that I am over 18 years of
age and have a possessory interest in the items in the said premises. I have not been made
any threats or promises by the above named personnel, this ZHE day of March
, 20 dg.
and the state of t
I further affirm that I have been advised of my constitutional rights. A partly Butter
Signed Signed
Witness (D)
The second second
Witness



Circle one	STATEMENT	
Circle one Sictim/Witness: DOZOTHY BESTER		Case #: 20080308801
Address:	STATE'S EXHIBIT	Date: Z4 MARCH ZOOS
City/St	TU	Time: 1645
Phone# HO:WK:	ngyydddinanud y	Interviewer: R. MWNIS
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Signature:	Witness:	

EXHIBIT

Courts

801 RICHARD ARRINGTON, JR. BLVD. N.

BIRMINGHAM, ALARAMA 35203-2320

OFFICE OF THE DISTRICT ATTORNEY





BRANDON K. FALLS

District Attorney
Tenth Judicial Circuit

TELEPHONE (205) 325-5252

PAX (205) 325-5266

(205) 325-5266 Bessemer Circuit Court

Courthouse Annex 1801 3rd Avenue North

Bessemer, AL 35020 Attn: Circuit Court Clerk

Re: Certified Copies

Dear Clerk:

I am requesting that certified copies of the listed prior convictions for Durrell Bester be mailed to our office. These certified records are needed to sentence this defendant under the Alabama Habitual Felony Offender Act. This information is required by Alabama Law. To help expedite this process, listed below is the personal information that I have on this individual:

Defendant Name: Durrell Bester

OAlias:

DOB: 9/12/1980

Social: 423-08-3686

Race: Black sex: Male

Please provide as soon as possible.

We are interested in the following offense(s):

DFIOD

CC 1999-0970

DFIOD

CC 1999-1278

UPOM 1

CC 2001-0258

UPOM 1

CC 2001-0259

Please mail a certified copy of these prior convictions to the Jefferson County District Attorney's Office. Our mailing address is:

Office of the District Attorney

Tenth Judicial Circuit

Attention: LawClerks

801 21st Street North

Birmingham, Alabama 35203

Your prompt assistance in this matter will be greatly appreciated. Please feel free to reach me at (205) 325-5252 ext. 264 if you have any questions regarding this matter, have any trouble locating this case or if you need any further information. Thank you very much

Sincerely,

Law Clerk

to 3 10 P

State of Alabama Unified Judicial System Case Number CASE ACTION SUMMARY CC 99-970 Form C-7 CONTINUATION Rev 2/79 Style: . Page Number Pages ACTIONS, JUDGMENTS, CASE NOTES The defendant being in open court, accompanied an represented by his attorney of record herein, and the indictment in this cause now having been read to the defendant now being duly arraigned does now plead not guilty, with leave of the court hereby granted to the defendant hereafter, but prior to trial date, to interpose any special pleas which he might legally have interposed prior to entering his said pleas of not guilty. This cause is ordered set for trial. 5/8/2000 Case passed to August 28,2000 For trio

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State of Alabama Unified Judicial System

CASE ACTION SUMMARY CONTINUATION

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CASE ACTION SUMMARY CONTINUATION

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- LASE ACTION SUMMARY

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CONTINUATION Humber Ferm C-7 Rev. 2/79 Style: STATE OF ALABAMA V. Bester Durrel Page Number_ Pages ACTIONS, JUDGMENTS, CASE NOTES DATE The defendants desire to plead guilty having been made known to the Court, the Court addressed the defendant personally in the presence of his counsel in open court and ascertained that the defendant has a full understanding of what a guilty plea means and its consequences. A rights waiver form was executed by the Court, defendant and counsel for the defendant and is incorporated herein. The Court is satisfied that there is factual basis for the plea. The defendant pleads guilty to The defandant ploads guilty as youthful offender, underlying charge of prior felony conviction Habitual offender hearing held, the Court finds Sentencing Hearing [] held; [] waived. The Court asked the defendant if he/she had anything to say why the sentence of law should not be imposed against him/her and the defendant having had his/her say or had nothing to say, it is the judgment and sentence of the Court as fol: The Defendant is sentenced to the custody of montn(year(s), The Department of Corrections for a period of to serve. split day(s). The following costs are assessed against the defendant: [G Victim's Compensation \$ Costs of Court Fair Trial Tax Fund \$ Fine \$ Restitution to the victim(s) \$ CENTER THAT THE Drug Demand Reduction Act Assessment \$ 1,000 The payment of Court ordered monies shall be a condition of parole, early release, S.I.R. and work release. The Clerk is authorized to accept part payments for all Court ordered per no. ELEGANA, CALEB monics. First payment due on The sentence is to be concurrent with the sentence imposed in Gase number Case number The defendant is given credit for all of the actual time spent incarcerated avaiting trial of this case unless he was serving time fo another offense. The defendants application for probation is accepted and the Probation Office is ordered to make an investigation and report its findings to the Court... لمانيا وأجأز أرأما ياليون

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STATE'S EXHIBIT

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INDEX OF EXHIBITS RETAINED IN TRIAL COURT ARAP – RULE 10

APPELLANT, DURRELL BESTER

VS

APPELLEE, STATE OF ALABAMA

CASE NUMBER: CC 08 3771-3772

LIST OF EXHIBITS RETAINED IN THE TRIAL COURT WHICH CANNOT BE LEGIBLY

PHOTOCOPIED:

STATE'S EXHIBIT 11

BLACK BOX/TRUCK
STATE'S EXHIBIT 12

EVD. INSIDE RESIDENCE

STATE'S EXHIBIT 13 DRUG PAR SATAE'S EXHIBIT 14 COCAINE

ANNE-MARIE ADAMS, CLERK CIRCUIT COURT, CRIMINAL DIVISION

DATE: NOVEMBER 30, 2009

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1	ORIGINAL STATE OF ALABAMA
2	IN THE CIRCUIT COURT
3	OF THE TENTH JUDICIAL CIRCUIT
4	FOR JEFFERSON COUNTY, ALABAMA
5	CRIMINAL DIVISION
6	
7	DURRELL BESTER,
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. 9	APPELLANT,
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11	VS. Case Number: CC2008-3771,
12	CC2008-3772
13	STATE OF ALABAMA,
14	CIRCUIT CHIMINAL
15	APPELLEE. NOV 2 4 2009
16	ANNE-MARIE ADAMS CLERK
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18	
19	COURT REPORTER'S OFFICIAL TRANSCRIPT
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21	The above-entitled case came on to be heard
22	before the Honorable Clyde E. Jones, Judge, on the
23	6th day of April, 2009 at or about 9:00 a.m.
24	before Alicia Martin, Official Court Reporter and
25	Commissioner.

1	APPEARANCES
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6	Representing the State of Alabama:
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9	Mr. Mike Anderton,
10	Deputy District Attorney
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16	Representing Defendant Bester:
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18	Mr. William Benson,
19	Attorney at Law
20	Birmingham, Alabama
21	
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1 PROCEEDINGS 2 April 6th, 2009 - 2:20 p.m. 3 4 (Whereupon, the following was 5 heard in open court with the 6 Defendant and all counsel 7 present.) 8 9 THE COURT: All right. This is State 10 of Alabama vs. Durrell Bester, CC08-3771. 11 Mr. Bester has three charges. 12 Trafficking in cocaine, failure to affix a 13 tax stamp and possession of drug 14 paraphernalia. 15 Are you going to proceed with those 16 three charges, State? 17 MR. ANDERTON: Yes, sir. 18 THE COURT: All right, then. 19 Defendant is represented by William Benson. 20 You have something? 21 I do, Your Honor. MR. BENSON: 22 I apologize, first, for not having a 23 written motion, but I would like to do a 24 motion to suppress the evidence. 25 I think what the State is going to

contend in this case was that --

THE COURT: I think we need to put this stuff about this offer, first, on the record.

MR. BENSON: Okay.

MR. ANDERTON: Judge, the State of
Alabama would like to place on the record
that in this case, of course, as the Court
has listed Mr. Bester is looking at a charge
of trafficking in cocaine. Which is a Class
A felony here in the State of Alabama.
Under the Alabama Habitual Offender Act,
Mr. Bester would be looking at -- Well, the
trafficking in cocaine would normally be a
10 to 99 to life. Mr. Bester, from the
State's information, has four prior felony
convictions which would make Mr. Bester
looking at a sentence of either life or life
without parole, under the Alabama Habitual
Offender Act.

THE COURT: Is that left to the Judge's discretion?

MR. ANDERTON: Yes, sir. Yes, sir.

That would be within the Judge's discretion.

Now, the State, if there is a

conviction in this case, would certainly make the argument to the Court that

Mr. Bester should be sentenced to life in prison without the possibility of parole based on the fact, and we would argue to the Court, that he is in fact a violent offender. And that would be based, Your Honor, on the fact that there are two -- two of Mr. Bester's convictions, prior convictions, are for discharging a firearm into an occupied dwelling.

In each of those cases, I believe, he actually pled to discharging into an occupied vehicle. But was sentenced to ten years on each one of those cases in front of Judge Parsons. The other two convictions are two different convictions of possession of marijuana first-degree. Out -- and, again, out in the Bessemer Division of Jefferson County.

Giving him a total of four, but if the Court -- I mean, if the State made the argument to the Court, and the Court accepted that State's argument, that Mr. Bester was in fact a violent offender,

he would be looking at a sentence up to life without parole.

We, the State of Alabama, has made an offer to Mr. Bester to plead guilty, in fact, to the trafficking and tax stamps, and the drug paraphernalia - which is a misdemeanor - plead guilty and receive a life sentence. At that point, Mr. Bester would, in fact, be able to be paroled at some point. Under the life without parole, which is what the State would push for if there is a jury trial and a conviction, then he would not be eligible for parole.

And I wanted to put that on the record so that the Court knew that, and so that anybody who may look at this later on, will certainty be apprised that Mr. Bester was told what the potential punishments in these cases are.

THE COURT: All right, Bill.

MR. BENSON: Your Honor, I'll save any argument as far as the sentencing guidelines should that time come necessary.

THE COURT: But I need something -Mr. Bester --

MR. BENSON: I will state, Your Honor, that my client contends he only has one prior conviction of discharging a firearm into a vehicle.

Should it become necessary, I'll be in touch -- I'll be in touch with his attorney on those just to make sure the information the State has provided is correct.

THE COURT: Well, you know, at this point, it seems to me that both sides ought to know how many prior felonies this man has. And he should know. And counsel should know. So that there isn't any question about it. I would hate for him to file a Rule 32 and say, well, my lawyer didn't find out I had three prior felonies -- even though he's telling you he only has one, now, Billy.

MR. BENSON: Uh-huh.

THE COURT: And then, he said, well, if you know my lawyer had told me I did have three instead of one, then, you know, I wouldn't have went to trial. You know.

So I don't understand why it is not clear how many priors -- Do you have some

details Mike --

MR. BENSON: The State has provided me copies -- the certified copies of those records. I have shown those to my client.

And he still contends that there's only one prior conviction --

MR. ANDERTON: Your Honor, for the record, the State would represent to the Court that we have four different case numbers. Again in the Bessemer Division of Jefferson County, CC99-0970. Which is a discharging a firearm into an occupied dwelling.

CC99-1278, which is a discharging a firearm into an occupied dwelling.

CC2001-0258, which is a possession of marijuana first-degree.

And CC2001-0259, which is also a possession of marijuana in the first-degree.

Your Honor, the Defendant may be under the mistaken impression that because the two discharging were pled guilty to on the same day, they only count as one offense. He may also be under the misunderstanding that because the two possessions of marijuana

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were pled quilty on the say same date, that that is only a single conviction. believe the State of Alabama -- the law here in the State of Alabama has ruled that each one of these would be in fact a conviction. Giving him a total of four. That's correct. THE COURT: Well, Mr. Bester, you've heard these

statements by the DA; have you not?

THE DEFENDANT: Yes.

THE COURT: And what he's saying at this point is that you're looking at life or life without parole. And they're offering you a life -- a recommendation of a life sentence if you choose to plead quilty today.

And I need to know that you understand that, and understand that from what I'm hearing there's a possibility that you could receive a sentence of life without parole.

If it was shown that you had at least three prior felony convictions, do you understand that?

> THE DEFENDANT: Yes.

THE COURT: All right.

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And you wish to exercise your right to 1 2 a trial by jury or you wish to take the State's offer of life? 3 THE DEFENDANT: I'm going to take my 4 5 right. THE COURT: Sir? 6 7 (No response.) 8 THE COURT: Sir? I didn't hear you, 9 I'm sorry. THE DEFENDANT: Could you repeat the 10 11 question? 12 MR. BENSON: Do you want the jury trial 13 or do you want to take the plea? 14 THE DEFENDANT: I really want to hire 15 me another lawyer. Because I feel I'm not 16 represented right. 17 THE COURT: Well, I didn't ask you 18 that. I need to know, we got a jury right 19 outside this courtroom, ready to go, and I 20 need to know if you want to take the life 21 sentence or do you want to go to trial? 22 (No response.) 23 (Brief Pause.) 24 MR. ANDERTON: Obviously, I'm not 25 trying to speak for Mr. Bester. Obviously,

but, I guess I just want to make it clear, that there is a difference between a life sentence and a life without parole sentence.

And perhaps Mr. Bester does not grasp the difference.

THE COURT: Well, I think Mr. Bester understands that life without parole means you never get out of prison.

And a regular life sentence means that, at some point, you would be eligible for parole.

MR. ANDERTON: All right. Thank you.

MR. BENSON: Your Honor, at this time,

I think -- I mean, I'm sort of at a

difficult position here. My client has

asked for a new attorney, I would

respectfully request this Court to grant his

wish, if he doesn't feel like he's getting

the quality of representation he needs,

then --

THE COURT: I don't wait till the moment of trial --

MR. BENSON: I understand, Judge -THE COURT: -- to deal with attorney
issues.

Okay. So you understand that you wish to proceed to trial; is that correct, Mr. Bester?

THE DEFENDANT: I guess, yeah.

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THE COURT: All right. You said you had something on a motion to suppress, Billy?

MR. BENSON: Yes, sir, on a motion to suppress, Judge.

I believe what the State -- the evidence the State will present, will be that my client was under surveillance by the police officers. He was seen leaving his residence with a bag. And got into a pickup truck belonging to another individual.

They followed him to his mother's residence. He took the bag upstairs, then came back downstairs without the bag. Left with those individuals. Police continued to follow the vehicle, pulled the vehicle over.

That's when they found the paraphernalia. Then, went back to the mother's residence. At that time, again, this is what I believe the State is going to state. The police officers asked the mother

if they can come in and search the residence. And that she agreed to let them come in and search. And directed them to where Mr. Bester placed the bag.

Your Honor, I've spoken with Mr.

Bester's mother, the State has provided a copy of the consent to search premises, which she signed. Which she does acknowledge signing. But she states that she was not -- She has a 7th grade reading level. That she did understand what she was signing, was not informed of what she was signing. And even when she did sign it, it was signed after the search was conducted.

So on those grounds I would ask this Court to suppress the evidence as an illegal search, and that it was not a valid consent.

(Brief pause.)

MR. BENSON: It was not a search warrant, it was a "stop and knock", I think is what they call it.

THE COURT: Well, I will listen --

MR. BENSON: The mother is here.

THE COURT: -- carefully, as I do in every case, to the facts. And I will allow

you to renew your motion to suppress, along 1 with your timely motion for judgement of 2 3 acquittal at the conclusion of all the evidence in the case. 4 5 MR. BENSON: Thank you, Judge. THE COURT: All right. 6 7 (Whereupon, State's Exhibit Numbers 1 through 14 were marked 8 for identification.) VOIR DIRE. 10 April 6th, 2009 - 2:30 p.m. 11 (Whereupon, the following was in 12 13 open court with the Defendant and 14 counsel present.) 15 (Whereupon, a jury venire was 16 brought in and sworn, the 17 indictment was read, the venire was qualified and identified, 18 19 after which the following was had 20 and done.) 21 (Whereupon, special questions on 22 voir dire examination were asked 23 of the jury venire by counsel for 24 the State, there being no 25 objections or exceptions taken

thereto.)

THE COURT: Ladies and gentlemen, we are going to break right now, for the evening.

I need you all to be back in the courtroom about 10 till 9. About 10 till 9, by the clock in the back of the courtroom.

Please, don't go back across the street to the big jury room, okay. Please, come here to the 7th floor of the Criminal Justice Building, Judge Jones's courtroom, all right.

You all don't know anything about the facts of this case. Please, don't make any decisions, please don't rush to any conclusions. You only make a decision when you have heard all of the evidence in the case.

Does anyone have any questions about tomorrow morning?

A JUROR: What time you say?

THE COURT: About 10 till 9. About ten till nine. And if you want to come a little earlier, Neil, will have you a pot of coffee back there.

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But y'all come back here in the morning. And don't discuss the case. We haven't talked about any address.

When we come back in the morning, we

when we come back in the morning, we will pick up where we left off. We will listen to the defense questions at that time. Then we will select our jury. And we'll get your number down to 13. Which will give us 12 jurors with an extra in case we have an emergency.

Does anyone have a question?

Everyone know where they parked?

Yes, sir?

JUROR: So just to clarify, we won't go to the regular jury room tomorrow morning, we'll come straight to this building --

THE COURT: Exactly.

JUROR: -- we don't check in over there?

THE COURT: We are still in jury selection here.

JUROR: Okay.

THE COURT: So once I get 13 of you selected, then I will release the other ones to go back over there for further service

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1	during the week.
2	JUROR: Yes, sir.
3	THE COURT: Okay. All right, any other
4	questions?
5	(No response.)
б	THE COURT: Very good. All right.
7	You all have a good and safe evening.
8	And I'll see you in the morning at 10 till
9	9.
10	(Whereupon, the jury venire was
11	released at 4:15 p.m.)
12	MR. BENSON: Are you going to reinstate
13	my client's bond?
14	THE COURT: Nope. I'm not.
15	MR. BENSON: I would ask that you
16	reconsider. He hasn't violated his bond.
17	He's shown up for court every time.
18	THE COURT: He's looking at what?
19	MR. BENSON: He's looking at life.
20	THE COURT: Or life without?
21	I'll feel better knowing I've got him
22	
22	here.
23	here. (Whereupon, on April 6th, 2009

PROCEEDINGS

April 7th, 2009 - 9:00 a.m.

(Whereupon, the following was heard in open court with the Defendant and all counsel present.)

THE COURT: All right. Good morning, ladies and gentlemen.

We are going to continue with jury selection this morning. And I think the State had finished on yesterday evening. So now, we will turn now to the defense.

And Billy, you have the floor.

(Whereupon, special questions on voir dire examination were asked of the jury venire by counsel for the defendant, there being no objections or exceptions taken thereto.)

(Whereupon, a short recess was had, after which thirteen jurors were selected and the following proceedings were had.)

THE COURT: What says the State?

MR. ANDERTON: The State is satisfied,

Your Honor. 1 2 THE COURT: What says the defense? 3 MR. BENSON: The defense is satisfied, 4 Your Honor. 5 THE COURT: Ladies and gentlemen, to 6 those of you all who were not selected, we 7 thank you and appreciate your service in 8 jury selection in this case. Would you please return to the big jury 10 room across the street for further service 11 during week? Have a great week. 1.2 (Whereupon, those not selected 13 were released.) THE COURT: All right, ladies and 14 15 gentlemen, let's talk a bit. Try to get you 16 orientated. A JUROR: Your Honor? I believe I need 17 18 to speak with you and counsel in chambers before we get started. 19 20 Or there's something I need to discuss 21 with you. 22 THE COURT: Okay. Come on back in 23 chambers. 24 (Whereupon, the following was 25 heard in chambers with the

defendant and all counsel, along with the juror.)

THE COURT: Okay. Ms. McAlister, you

have something you want to tell the Court?

JUROR: Yes, sir. Just before we get
started, I wanted to let you know that I did
leave when you gave us the break, and I
don't know if these were Mr. Bester's
friends or family that were sitting behind
me. But they were having discussions about,
it sounded like whether they believe the

search warrant was proper or not.

And also heard a statement, "I know he doesn't want to go back to jail," and I don't know if that means his initial arrest or he's been priorly convicted of another crime. And I don't believe that would influence my decision. I certainly know I don't consider that evidence. But I just wanted to make all the parties aware that I heard these discussions.

THE COURT: Okay. Would you do me a favor and have a seat right outside there, please?

(Whereupon, the juror complies.)

4 5

THE COURT: They shouldn't have been talking in the courtroom.

MR. BENSON: I will certainly instruct them to cease and desist, Your Honor, I apologize.

THE COURT: Well, I only have one extra.

MR. ANDERTON: Judge, of course -
THE COURT: Wasn't she the last one to

come on the jury?

MR. ANDERTON: She was, yes, Your
Honor. Mr. Jenkins was sitting next to her,
and I don't know how long these discussions
have been going on. Or if Mr. Jenkins or
any of the other jurors heard Mr. Bester's
family speaking in those terms. How long
they've been doing, how loud they've been
doing it, even during the break while -before we reconvened this time.

I don't know. I know Mr. Jenkins is on the last guy - I can't remember his name, he's not on - he's not on, I don't think, concern.

But Ms. McAlister and Mr. Jenkins were on that final row.

1 THE COURT: Right, right. 2 Maybe he left during the break. 3 MR. BENSON: I believe he did, Your 4 Honor. 5 THE COURT: I don't know, I wasn't out 6 there. 7 MR. ANDERTON: Of course, I don't 8 either. 9 But I also don't know if they continued these discussions while the jurors were back 10 11 in the room. But, talking about the facts of the case, like that, around people that 12 they know are potential jurors in this case. 13 14 (Brief pause.) 15 THE COURT: All right. What do you 16 suggest we do with her? 17 We could excuse her. And just let her 18 be the alternate. 19 MR. ANDERTON: She has said -- she has 20 said that, you know, she doesn't consider 21 that evidence. 22 MR. BENSON: Right. 23 MR. ANDERTON: And she was quite 24 honestly forthright enough to come to the 25 Court on her own, and not even in answering

a question, "Do you need to talk to us in the back room?", she kind of did it on here own.

THE COURT: She is the alternate.

MR. BENSON: Right.

THE COURT: I guess, we can just tell her don't talk to anybody else.

MR. BENSON: And Your Honor, she is an attorney --

THE COURT: But there is risk of contamination.

I'm sorry?

MR. BENSON: She is an attorney, if I remember correctly. And so I think that, you know, she's a aware of the process and can put that aside.

THE COURT: Well, I don't want him coming up later saying, well, my attorney should have got her off the jury, so I didn't have fair trial, so give me a new trial.

I'm thinking the safest thing to do is just exclude her. I mean, she seems like she's a real, you know, nice lady, and would be a good juror. But as it stands, she's

the alternate.

So since she's already the alternate.

And this case is not going to last but a day, right?

MR. ANDERTON: I wouldn't expect it to be any more than that.

THE COURT: So I think the safest thing to do, and the best thing to do for him, so as not to help make any issues. Is just to be exclude her and let her go. Before she has any contact with the other jurors. And that way he can't speculate as to whether or not she said something to somebody during a break, or lunch, or while they, you know, back in the jury room.

MR. ANDERTON: Judge, may I make the suggestion, that we give Mr. Benson and Mr. Bester a moment to talk among themselves? It may be that he would have just as big an argument on appeal, by saying she should have not been excused.

THE COURT: Well, she's already the alternate, she's not on the jury.

MR. ANDERTON: I understand.

THE COURT: You know, she's just the

1 alternate. 2 You have something you wish to add for 3 the record? MR. BENSON: Your Honor, we're in favor 4 5 of the Court's position. 6 MR. ANDERTON: Okay. MR. BENSON: That she should be 7 8 excluded. 9 THE COURT: Have you talked to your 10 client? 11 MR. BENSON: No -- Well, if you mind 12 just giving me a moment I'll talk to him. 13 THE COURT: Okay. 14 (Off the record.) 15 MR. BENSON: Your Honor, my client 16 concurs. This juror probably 17 should be excluded. 18 THE COURT: All right, I'm going to 19 exclude her. Okay. 20 Okay, next question. (Pause) Who are 21 those people out there, are they family? 22 MR. BENSON: The majority is family. 23 One of them won't be in, she's a potential 24 witness. So she'll be outside the 25 courtroom.

As I stated a moment ago, I will certainly get with the others and tell them the talking needs to cease and desist.

THE COURT: There's no doubt in my mind whoever said, "He don't want to go back to jail", is trying to influence the jury by making that comment.

Certainly it's gross negligence.

All right. Let's go back in.

She's excused.

(Whereupon, the alternate juror was excused.)

(Whereupon, the following was heard in open court with the Defendant and all counsel present, the jury is present.)

THE COURT: Ladies and gentlemen, y'all go in the jury room for a second.

(Whereupon, the jury leaves the courtroom, and the following is heard outside their presence.)

THE COURT: Those of you all that are here in the courtroom with the Defendant, you all have a right to be here. And we're glad to have you here in our courtroom.

But, because these are serious proceedings, you must be on your best behavior.

Now, I just had to excuse a juror because you all were talking in my courtroom. And the woman heard you all talking about him being in jail, and him not wanting to go back to jail.

First of all, you should not have been talking period in the courtroom. And second of all, you certainly should not have been saying anything about him in jail.

While you are in this courtroom, do not talk. If you want to talk, go outside and talk quietly. If you all cause a mistrial, he's going to be sitting in jail until the next trial date. Which may be two months from now. I don't know. So you don't want to do anything to cause a mistrial in this case. So be on your best behavior.

When the jury comes and goes. No one needs to be on that front row. Okay. Where they have to walk right past there. Okay.

Anything for the State?

MR. ANDERTON: Nothing, Your Honor.

THE COURT: Anything for the defense?

MR. BENSON: No, Your Honor.

THE COURT: Bring them in.

(Whereupon, the jury returns to the courtroom where the following was heard in open court with the Defendant and all counsel present.)

THE COURT: All right. Ladies and

THE COURT: All right. Ladies and gentlemen, first of all, you all are our jury for the trial of this case. And let me just say this:

Serving as a juror is an honor. It's a matter of civic pride. It is one of the most important things that we do as citizens in this country, serve on juries. It's right up there along with voting. Those are the two most important civic responsibilities that we have.

And when you are serving as a juror in the case, you have responsibility to make sure that you are not doing anything improper, okay.

So if you have a question about whether you should or should not be doing something, I would caution you, probably, not to do it

until you check with the court, okay. If you have a question in your mind.

Okay, let's go ahead then and get started.

First thing I'd like to do is review the charges. And then we're gonna talk about some other things to kind of get you familiar with the process.

How many have served on a jury before?

(Jurors indicate by raising their hands.)

THE COURT: Couple. Okay. So this should be helpful for the rest.

The Defendant, as I said before, enters into the court presumed to be innocent.

That is, he comes into the court with the presumption of innocence around him. And that coat of presumption of innocence follows him throughout the trial, until such time, as the State, through the D.A.'s Office there, can prove beyond a reasonable doubt that he is guilty.

In other words, the Defendant has no burden of proof. The burden of proof is on the State because the State brought the

charges. Okay. These charges against the Defendant, charging him with trafficking, failure to affix a tax stamp and possession of drug paraphernalia.

These charges are not evidence. It's simply the way we notify a person who is accused of committing a crime of the formal charge or charges against him or her. And that's why you are here. To determine if the State can prove beyond a reasonable doubt the Defendant's guilt.

What is a reasonable doubt? It's a doubt that you can give a good, sound, sensible reason for. A good, sound, sensible reason for.

Say I have a reasonable doubt of the Defendant's guilt because of this fact, or that fact. Or because of a review of all of the evidence, or some part of the evidence, or from a lack of evidence. If you do not have a reasonable doubt, you convict. If you do, you acquit.

You, ladies and gentlemen, are the finders of facts in this case from the evidence. And in determining the guilt or

innocence of this Defendant, you should not go outside of the evidence that you receive from this witness stand. Except you should use your good common sense and life experiences that you've gained during the course of your lives. You want to take that good common sense with you back in the jury room during your deliberations and use them.

So when you go back there, you're going to have the testimony that you've heard, you are going to have exhibits that I have allowed into evidence for your consideration, along with your good common sense, education, life experiences and training. Okay.

It would be your job, as the judges of the facts, to determine the credibility, the believability, of the witnesses who testify during the course of the trial. In other words, it would be your job to determine how much weight you give to the testimony of the witnesses.

For example, one witness you might say, hum I give that witness a lot of credibility, give their testimony a lot of

weight. And the next witness you might say, I don't give that witness's testimony much weight or much credibility. You see what I mean?

Then, at the end of the trial, you take the evidence when you go back there that you believe. That you find credible, worthy of belief. And you ask yourself, does this evidence convince me beyond a reasonable doubt of the Defendant's guilt. If it does, you convict. If it does not, you acquit.

I am the judge of the law. It's my job to rule on objections that the attorneys make during the course of the trial. And you are not to presume anything from the rulings that I make on the attorney's objections. The attorneys are duty bound to make objections when they think it is proper. If an attorney objects and the Court says, "sustained", that means the witness cannot answer the question. If the Court says, "overruled", that means the witness is free to answer the question.

During the pendency of the case - and they tell me it's not going to be a long

trial - do not discuss this case or your feelings about similar matters among yourselves. Okay. In other words, you don't want to say, well, you know, last week one of my coworkers, two weeks ago, had jury duty. And they were on a similar case to this, and this is what happened -- Don't do that. Because see, then that gets that case over in this case, and we don't want that. Don't go on the internet to look up any terms or try to do some research. Why?

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Because you are going outside of what I just instructed you to. And that's to get your evidence from the courtroom, here, from this witness stand, and the exhibits, and your good ole common sense, okay.

So don't let anyone talk to you about this case during the pendency. And the 12 of you are to only talk about it once I give it to you for your deliberations, okay.

Okay.

I think Billy mentioned earlier during voir dire that the attornies may not speak to you if they see you outside, or in the hallways, or coming and going. That is

because they are attempting to avoid the appearance of impropriety. It wouldn't look right if I was leaving and I looked over and I saw one of you and one of these attorneys huddled over in a corner, talking, would it? You wouldn't want that. And it wouldn't be fair to either side. So that's why they don't talk to you because they are attempting to avoid the appearance of impropriety.

Normally, we'll have a morning recess about 10:30ish and an afternoon recess about 3ish. We normally start at nine and 1:30. Today that will probably be a little different. Because we have a little different afternoon schedule, but I will tell you about that when we break.

Okay. This is the trial procedure that we will follow. We will begin with the opening statements of the attorneys. In opening statements the attorneys are allowed to tell you what they expect the evidence to show in the case. To kind of give you a preview of coming attractions sort-of-speak. They tell you what they expect the evidence

to show in the case. Kind of give you a road map of where they plan to take you. The State will proceed first, then the defense will proceed.

After that, the State will begin calling witnesses to the witness stand in an effort to try to begin convincing you of the Defendant's guilt. The State will get to question the witness. Then the defense will get to cross-examine the witness. And different rules apply depending upon whether you called the witness or whether the other party called the witness.

At some point, the State will look to the Court and say that the State rests.

That means that they have called the witnesses that they wish to as of that time. And at that time, I will need to take up a legal matter with the attorneys out of your presence.

After that, we will then turn to the defense. And we'll ask the defense to call what witnesses that they may. And they don't have to because they don't have any burden. But they do have the right to call

whatever witnesses that they wish to. So once the defense calls a witness. Then, the State gets to question or cross-examine the witness also.

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Then, at some point, the defense will look to the Court and say the defense rests. And I will take up another legal matter with the lawyers. That we have to, procedurally speaking.

After you've heard all of the evidence, then the attorneys will engage in closing arguments to you. And in closing arguments the attorneys are allowed to review all of the evidence that they have presented from their vantage point. From their view point. To review the key points on their respective sides with you. And they also are allowed to argue inferences from the evidence in closing arguments for your consideration.

Because the State has the burden of proof, the State will argue their case first and last. With the defense arguing their case in the middle.

Finally, after closing arguments the Court will instruct you as to the law that

you should apply in the case. Then you will begin deliberations, okay.

The rule is in effect. Anyone that's going to testify as a witness must wait outside. Do not discuss your testimony with anyone other than the attorneys. Each side is responsible for enforcement of the rule on their respective sides.

(Brief pause.)

THE COURT: The charges are quite simple.

The trafficking count charging Durrell Bester with either knowingly bringing into this State being in actual or constructive possession of 28 grams, but less than 500 grams of cocaine. That's trafficking. Which is based on the amount.

The second count is failure to affix a tax stamp to those drugs that he was alleged to have been in possession of. Because the law says, if you are gonna have drugs, you have to get tax stamps and put them on the drugs.

The third count is simply drug paraphernalia count. Alleging that he had

syringes, Brillo pads, an ashtray, a pill splitter and a push rod used for unlawfully injecting cocaine in his possession.

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So it will be your job to determine whether or not the State can prove these charges beyond a reasonable doubt. Okay.

All right. So let's turn our attention now to the -- Oh, let me say this.

When we begin taking testimony, we will give you note pads and a pencils so that you can make notes of testimony that you wish to memorialize for your later consideration, okay.

What the lawyers say is not evidence. So in opening statements you will not have the note pads and pencils to make notes.

So once the testimony begins, we will give you notepads and pencils. Because once you're back there deliberating, you can't send me a note that says, "Judge, what did the second witness say about the color of the car?"

I cannot comment on it. Because that's your job. To determine what the facts are in the case, okay? All right.

Let's turn our attention now to the 1 2 State and let's hear their opening 3 statement. Mr. Anderton, you have the floor. 5 (Whereupon, the State presented their opening statement to the jury, there being no objections or exceptions taken thereto.) 8 9 (Whereupon, the defense presented 10 their opening statements to the 11 jury, there being no objections or 12 exceptions taken thereto.) THE COURT: State, are you prepared to 13 14 call your first witness? 15 MR. ANDERTON: We are, Your Honor. 16 THE COURT: Call your first witness. 17 The State calls Mark MR. ANDERTON: 18 Eaton. 19 DEPUTY MARK EATON, 20 A witness for the State, 21 Was duly sworn and testified as follows: 22 THE COURT: Have a seat, get comfortable, scoot up towards the 23 24 microphone, watch your knees down there. 25 (Witness complies.)

THE COURT: State your full name for 1 2 the record, please, sir. 3 THE WITNESS: Mark Eaton. THE COURT: Go ahead, State. 5 DIRECT EXAMINATION BY MR. ANDERTON: 6 7 Mr. Eaton, where do you work? 8 I work at the Jefferson County Sheriff's Office. In what capacity? 10 11 I'm an investigator for the Vice and 12 Narcotics Unit. 13 All right. As an investigator for the Vice Q. 1.4 and Narcotics Unit, what do you do, Mark? 15 My job is to investigate complaints, or 16 reports we get of people that are selling drugs. 17 Take the investigation to the point of purchasing 18 drugs from these individuals, and then executing search warrants. 1.9 20 Okay. And how long have you been working 21 with the Jefferson County Sheriff's Office? 22 Α. 14 vears. 23 Okay. And how long have you been an 24 investigator with the narcotics department?

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Α.

Five years.

- 1 Q. All right. During the course of that time,
- 2 is it Sergeant Eaton, is it Officer Eaton, what is
- 3 | it?
- 4 A. Deputy.
- 5 Q. Deputy Eaton?
- Deputy, during the course of that 14 years
 with the Sheriff's Office have you had occasion to
- 8 participate in the execution of search warrants?
- 9 A. Yes, sir.
- 10 Q. All right. And during the course of the
- 11 last five years have you had occasion to in fact
- 12 secure a search warrant, and execute them
- 13 yourself?
- 14 A. Yes, sir.
- 15 Q. All right.
- Deputy, let me direct your attention to the
- 17 24th of March, 2008 and ask you if you remember
- 18 | that particular occasion.
- 19 A. Yes, sir.
- 20 Q. All right. Based on the events of that day,
- 21 | had you come to know a fellow by the name of
- 22 | Durrell Bester?
- 23 A. Yes, sir.
- 24 Q. And do you see Mr. Bester in court today?
- 25 A. Yes, sir.

- Would you point him out and tell me what 0. he's wearing today, please?
- He's sitting right over there (pointing) wearing a white shirt and dark colored tie, and slacks.
- ο. All right?

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MR. ANDERTON: Your Honor, if the record could reflect the witness as indicated the Defendant, Durrell Bester?

10 THE COURT: So noted.

- Now, Deputy Eaton, prior to March 24th, 2008 did you in fact secure a search warrant for the person of and the apartment of Durrell Bester?
- 14 For the person and the residence of Durrell 15 Bester, yes, sir.
 - Okay. And did you in fact serve that search warrant at the time you wanted to serve that search warrant?
- Not at the exact time. 19
- 20 ο. Okay. And tell us what happened prior to 21 actually serving that search warrant.
- We had surveillance on the residence. 23 Washington and Sergeant French were sitting on the streets and watching the residence while we were briefing for the search warrant and preparing to go

execute the search warrant. 1 2 Q. Okay. 3 While they were sitting there they observed a 4 pickup truck come ---5 MR. BENSON: Objection, Your Honor, to the Detective -- or Deputy testifying to 6 7 what another officer saw. 8 THE COURT: Sustained. 9 Q. All right. 10 When were you -- were you notified that 11 something was going on over at the apartment? 12 Yes. They called me on the radio. Α. Okay. And Did you in fact have a 13 14 conversation with them? 15 Yes, sir. Α. 16 All right. When was the first time that you 17 arrived on any scene concerning this 18 investigation? 19 It was just a few minutes later. Α. 20 All right. And where did you arrive? 21 I came to the location, 1100 Center Point 22 Road at the Bama Gas Station, where the pickup 23 truck had left that residence and come to this

25 Q. All right. And at that time, did you see

location.

- 1 the individual you know as Durrell Bester?
- 2 A. No, I didn't -- I couldn't tell who was in
- 3 the vehicle at that time. I only saw the vehicle.
- 4 Q. Okay. Did the vehicle stay there?
- 5 A. No.
- 6 Q. Stay there at that gas station?
- 7 A. No, sir.
- 8 Q. Okay. Where did it go?
- 9 A. It left out of the gas station, and we
- 10 followed it to an apartment at the Twin Gates
- 11 Apartment Complex on Huffman Road on the other side
- 12 of Center Point Parkway.
- 13 Q. All right. And the Twin Gates Apartment
- 14 | Complex is that here in Jefferson County?
- 15 A. Yes, sir.
- 16 Q. Is it in the Birmingham Division of
- 17 | Jefferson County?
- 18 A. Yes, sir.
- 19 Q. All right. Once the truck -- You said you
- 20 | were following a truck?
- 21 A. Yes, sir.
- 22 Q. Did you see anybody get out of that truck?
- 23 A. Yes, sir.
- 24 Q. Okay. Who did you see get out of that
- 25 truck?

- A. When it arrived at the apartment complex, I saw Mr. Bester and a white male, who we didn't know
- 3 at that time, get out of the pickup truck.
- 4 Q. All right. And what, if anything, did they 5 do at that point?
- 6 A. They both walked into an apartment there at the apartment complex --
- 8 Q. Do you know what apartment that was?
- 9 A. It was letter E.
- 10 Q. All right. Let me show you --
- 11 MR. ANDERTON: Judge, may I approach?
- 12 THE COURT: Yes, you may freely.
- 13 Q. Let me show you what's been marked as
- 14 State's Exhibit No. 1, for identification
- 15 | purposes, and see if you can identify that,
- 16 please?
- 17 A. Yes, sir. This is the apartment door with
- 18 | the letter number E on the door that the Defendant
- 19 | went into to.
- 20 Q. Okay. Did you go into that apartment at
- 21 | that time?
- 22 A. No, sir.
- 23 Q. Who went into that apartment at that time?
- 24 A. At that time, none of us went into the
- 25 apartment only the Defendant and the white male

- 1 that got out of the truck with him.
- 2 Q. Okay. When Mr. Bester got out of the car --
- 3 truck, and went into the apartment, was he
- 4 carrying anything?
- $5 \mid A$. Yes, sir. He had a white bag in his hand.
- 6 Q. Okay. About how long was Mr. Bester and
- 7 this white male were they in the apartment?
- 8 A. One to two minutes, approximately.
- 9 Q. Then what happened?
- 10 A. They came out, got back in the truck, and
- 11 drove away from the apartment complex.
- 12 Q. Okay. When Mr. Bester left that apartment
- 13 complex -- When he walked out of the apartment,
- 14 excuse me, and walked back to the truck, did he
- 15 have white bag with him at that point?
- 16 A. No, sir.
- 17 | Q. Okay. What happened once Mr. Bester and
- 18 this white male got back into the truck and drove
- 19 off?
- 20 A. We began to follow on Mr. Bester, and we
- 21 | called for a patrol unit to come stop him.
- 22 Q. Okay. Who is we?
- 23 | A. It was myself, most of the members of the
- 24 narcotic unit, other than Sergeant French and
- 25 Deputy Washington. They stayed at the Twin Gates

- 1 and watched the apartment while we followed Mr.
- 2 Bester to try and get him pulled over by a patrol
- 3 vehicle.
- 4 Q. All right. What type of automobile were
- 5 y'all in?
- 6 A. All of them were unmarked cars, SUVs and
- 7 different cars --
- 8 Q. Okay. But you didn't have any marked units
- 9 with you at that time --
- 10 A. No, sir. No, sir.
- 11 Q. Okay. So you weren't following him in a
- 12 | marked unit?
- 13 A. No, sir.
- 14 Q. Okay. And why not?
- 15 A. Part of our job is to do undercover work.
- 16 And we don't want to people to know who we are
- 17 until it's time for us to do so.
- 18 Q. All right. Now, there are unmarked cars out
- 19 there, Deputy Eaton, are there not, that have the
- 20 | blue lights and the sirens and all this kind of
- 21 | stuff?
- 22 A. Yes, sir.
- 23 Q. All right. When you indicated that you
- 24 | called for a patrol unit, why didn't -- Were your
- 25 | vehicles equip with all the blue lights and all

- 1 the other stuff?
- 2 A. No, sir. We don't have lights or sirens in
- 3 our vehicles.
- 4 Q. Okay. All right. So you said you called
- 5 for a patrol unit?
- 6 A. Yes, sir.
- 7 Q. And what was the purpose in calling for the
- 8 patrol unit?
- 9 A. We were calling them to come make a traffic
- 10 stop on Mr. Bester since I already had a search
- 11 | warrant for him also, and to stop him so that we
- 12 could detain him.
- 13 Q. All right. Did you notice anything about
- 14 the automobile that they were riding in also?
- 15 A. Yes. It was a pickup truck with a lot of
- 16 | luggage and other type of things in the back-end of
- 17 | the pickup truck.
- 18 Q. Okay. Was there anything about the tag that
- 19 | was unusual?
- 20 A. Yes. You couldn't see the year sticker. I
- 21 believe it was the year sticker. The tag was
- 22 askewed and you couldn't tell if it was a good tag
- 23 on the vehicle or not.
- 24 Q. Okay. And did in fact a patrol unit arrive
- 25 on the scene?

- 1 A. Yes, sir.
- 2 Q. All right. Did the truck pull over?
- 3 A. Yes, sir.
- 4 Q. All right. The patrol unit, now it's a
- 5 marked unit; is that right?
- 6 A. Yes, sir.
- 7 Q. Got the lights, got the siren and got the
- 8 door markings and stripes, and all that stuff,
- 9 right?
- 10 A. Yes, sir.
- 11 | Q. Okay. So it would be easily recognizable as
- 12 | an official sheriff's car?
- 13 A. Yes, sir.
- 14 Q. And did the truck pull over?
- 15 A. Yes, sir.
- 16 Q. Okay. What happened next?
- 17 | A. Deputy Daniels, was the patrol officer that
- 18 stopped the vehicle for us. He approached the
- 19 vehicle on the driver's side. And I pulled up and
- 20 approached the vehicle on the passenger side with
- 21 him.
- 22 Q. Okay. What happened next?
- 23 A. As we walked up to the car, I went ahead and
- 24 | got Mr. Bester out of the vehicle and informed him
- 25 that we had a search warrant for the residence that

he was staying at, as well has him. And I placed him in handcuffs and I put him in the back seat of the patrol vehicle.

Deputy Daniels talked to the two white male subjects that were in the car with them also.

- Q. Okay. Not what was said, but could you see that a conversation was taking place between Deputy Daniels and these other two men?
- 9 A. Yes, sir.

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- Q. Okay. In addition to running drug
 investigations, do you have any additional duties
 with the sheriff's office?
- 13 A. Yes, sir. I'm also the K-9 Handler for the 14 narcotics unit.
- 15 Q. All right. What is the K-9 Handler?
- 16 A. I have a -- My responsibility is that I have
- 17 a dog that's trained to detect narcotics. And I
- 18 use her on any search warrants to search the
- 19 residences, as well as vehicles on traffic stops.
- 20 And she's trained to detect four different types of
- 21 drugs.
- 22 Q. All right. What type drugs is she trained
- 23 to detect?
- 24 A. She can detect marijuana, methamphetamine, 25 cocaine and heroin.

- Q. Tell us what is her name.
- A. Pepsi.

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3 Q. All right.

THE COURT: What's her name?

THE WITNESS: Pepsi.

She was named in Europe before she ever came to the United States.

- Q. All right. Tell us, if you will, what her training is that would qualify her to be a drug dog.
- A. They go through a series of tests from the time the dogs are brought here to the United States. She was trained by Ricky Barleaf at Alabama Canine Law Enforcement Training Center. It's in Northport, Alabama.

There's 30 different drug finds that these dogs have to perform and score well enough on them to be certified as a -- to be used as a drug dog.

She passed all of those qualifications. And every year we go back for a week long evaluation and recertification on that training.

- Q. What type of dog is Pepsi?
- 23 A. She's German Shepherd.
- 24 Q. All right. How old is she presently?
- 25 A. We think she's around four to four and half

- 1 years-old.
- 2 Q. Okay. So she would have been about three or
- 3 three and half, at that time?
 - A. Yes, sir.
- 5 Q. All right. And at that time was she in fact
- 6 fully qualified?
- 7 A. Yes, sir --
- 8 Q. To be a drug dog?
- 9 All right. About how long had Pepsi been,
- 10 | I guess, working full-time as a drug dog?
- 11 A. At that time, I had had her for a year and
- 12 three months, and she was with a previous hander
- 13 before me for nine months. So approximately two
- 14 years with sherif's office.
- 15 Q. All right. And when she's not working,
- 16 where does Pepsi live?
- 17 A. At my home.
- 18 Q. And why is that?
- 19 A. Part of it is when you work a K-9 you form a
- 20 bond with that K-9, they're your partner, you take
- 21 care of them, you feed them, you give them water.
- 22 That way they trust you. And they do what you tell
- 23] them to do, and obey you and not other people that
- 24 you come into contact with on the streets.
- 25 Q. All right. Can you give the ladies and